



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,454	02/07/2001	Fumin Lu	8988.3826	3410

22235 7590 06/25/2003

MALIN HALEY AND DIMAGGIO, PA
1936 S ANDREWS AVENUE
FORT LAUDERDALE, FL 33316

EXAMINER

BOYD, JENNIFER A

ART UNIT	PAPER NUMBER
----------	--------------

1771

DATE MAILED: 06/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/778,454

Applicant(s)

LU, FUMIN

Examiner

Jennifer A Boyd

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The Applicant's Amendments and Accompanying Remarks, filed April 6, 2003, have been entered as Paper No. 4 and have been carefully considered. Claims 1-8 are pending. The objection to the Specification is withdrawn. The Examiner withdraws the 35 U.S.C. 112, 2nd paragraph rejection of claims 1 – 8 as set forth in paragraphs 2 - 3 of Paper No. 2. Despite this advance, the invention as currently claimed is not found to be patentable for reasons herein below.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

3. Claims 7 – 8 remain rejected under 35 U.S.C. 102(e) as being anticipated by Ofosu et al. (US 6,268,302). The details of the rejection can be found in paragraphs 4 – 5 of Paper No. 2.

Claim Rejections - 35 USC § 103

4. Claims 1 – 2 and 3 – 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lu (US 5,688,468) in view of Ofosu et al. (US 6,268,302).
5. The amendment to claim 1 which requires that the polypropylene resin has a melt flow rate in grams/10 minutes at 230 degrees centigrade is greater than 200 still is encompassed by Ofosu et al. (US 6,268,302). Ofosu et al. teaches that one web is made

Art Unit: 1771

from a polymer with a melt flow rate greater than 50 grams/ 10 minutes at 230 degrees Celsius (Abstract) which can include the range of 200 grams/ 10 minutes and higher.

Response to Arguments

6. Applicant's arguments filed April 6, 2003 have been fully considered but they are not persuasive.

7. In response to Applicant's argument that Ofosu does not teach the newly amended limitation of the polypropylene resin having a melt flow rate of 200 grams / 10 minutes at 230 degrees Centigrade, the Examiner respectfully argues the contrary. Ofosu teaches an open-ended range for the melt flow rate of 50 grams/ 10 minutes ***or higher***. Although the highest example given by Ofosu does not exceed 110, the examples do not limit Ofosu's melt flow rate range. They are merely examples. Ofosu does not set a high end of the range of melt flow rates, so it is reasonable to say that the range of Ofosu and the range of the Applicant can overlap. Additionally, the Applicant requires that the laminate fabric has ***at least one*** layer from the filaments drawn above 4,000 meters per minute and with a melt flow rate of 200 grams / 10 minutes. Ofosu teaches that at least one layer (i.e. one layer) has met the requirements of the Applicant. It should be noted that the Applicant uses the transitional phrase "including". According to the MPEP, the transitional term "including" is synonymous with "comprising," "containing," or "characterized by," which is inclusive or open-ended and ***does not*** exclude additional, unrecited elements or method steps. See, e.g., *Genentech, Inc. v. Chiron Corp.*, 112 F.3d 495, 501, 42 USPQ2d 1608, 1613 (Fed. Cir. 1997). Therefore, the use of "including" does not preclude the presence of an additional layer comprising a polymer with a low melt flow rate. Also,

Art Unit: 1771

claim 2 does not specify how many layers contain a polymer with a melt flow rate higher than 200 grams / 10 minutes. Therefore, the combination of a high melt flow rate polymer spunbonded layer and a low melt flow rate polymer spunbonded layer would comply with the Applicant's limitations.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A Boyd whose telephone number is 703-305-7082. The examiner can normally be reached on Monday thru Friday (8:30am - 6:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Art Unit: 1771

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


Jennifer Boyd
June 23, 2003

